

ESTTA Tracking number: **ESTTA1102922**

Filing date: **12/18/2020**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92067794
Party	Defendant The Burton Corporation
Correspondence Address	CATHLEEN E STADECKER DOWNS RACHLIN MARTIN PLLC 199 MAIN STREET PO BOX 190 BURLINGTON, VT 05402-0190 UNITED STATES Primary Email: tmip@drm.com 802-863-2375
Submission	Testimony For Defendant
Filer's Name	Cathleen E. Stadecker
Filer's email	tmip@drm.com
Signature	/cathleen e stadecker/
Date	12/18/2020
Attachments	Cooley Declaration - FINAL Redacted.pdf(131147 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Reg. No. 2,207,535 issued on December 1, 1998
and Reg. No. 3,598,502 issued on March 31, 1999

Joshua S. Schoonover,	-----X	
	:	
Petitioner,	:	
	:	Cancellation No. 92067794 (parent)
-against-	:	Cancellation No. 92069499
	:	
The Burton Corporation	:	
	:	
Registrant.	:	
	-----X	

TESTIMONY DECLARATION OF STEVEN COOLEY

I, Steven Cooley, declare as follows:

1. My name is Steven Cooley. I am over the age of 18 and understand the obligations of an oath. I make this Declaration in opposition to the pending Petition to Cancel U.S. Reg. 2,207,535 for the mark FORUM. This Declaration is based upon my personal knowledge.
2. I have been employed by The Burton Corporation ("Burton") since January 2006.
3. I am currently the Director of Financial Planning and Analysis at Burton, a position I have held since October 2014. Prior to holding my current position, I was Manager of Financial Planning and Analysis at Burton from October 2012 to October 2014 and Senior Financial Analyst from January 2006 to October 2012.
4. I hold a Bachelor's of Science degree in Accounting from the University at Buffalo School of Management, the State University of New York, and a Master of Business Administration in Finance from the Johns Hopkins University.

5. As Director of Financial Planning and Analysis, I manage and supervise Burton's budgeting, managerial reporting, bank reporting, product profitability reporting, among other duties and responsibilities. I report directly to the Chief Financial Officer.

6. I also work closely with Burton's accounting, treasury, and accounts payable functions, and am familiar with and knowledgeable about all facets of accounting and finance at Burton.

7. As Director of Financial Planning and Analysis, and previously as Manager of Financial Planning and Analysis, I have personal knowledge that Burton has sold and offered for sale products under the FORUM brand both in the United States and internationally.

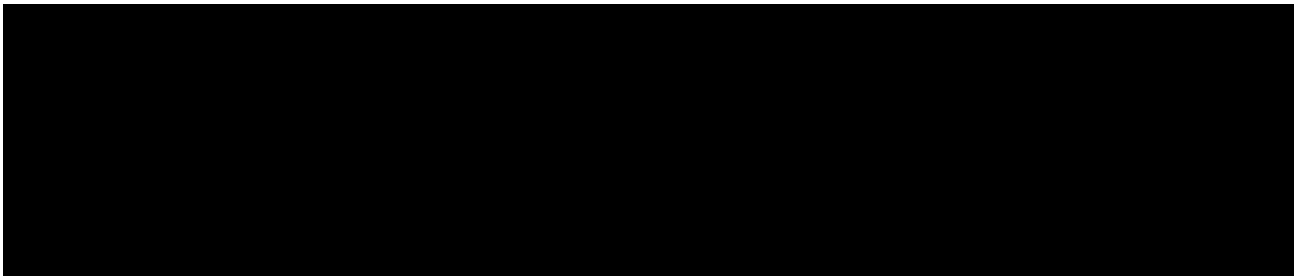
8. In the regular course of business, both I and the individuals I supervise prepare financial statements, sales reports, and other summaries or reports documenting Burton's commercial activities.

9. Attached hereto as **Exhibit 1** (BUR_00040-50) is a true and correct copy of a report generated and maintained in the regular course of business at Burton through its Business Intelligence (BI) database, which has been sorted to identify (by line item) all orders of FORUM-branded products for a portion of fiscal year 2013 and for the entirety of fiscal years 2014, 2015, 2016, and 2017. With respect to fiscal year 2013, the time parameters of the report were limited to identify orders for the time period of October 23, 2012 through February 2, 2013 (Burton's fiscal year end).

10. As the headers at the top of the first page of Exhibit 1 reflect, the left-most column ("Fiscal Year") represents the fiscal year in which the order was processed; the second and third columns from the left ("Sold-To Party") represent the party that placed the order and its corresponding vendor code; the remaining columns reflect the net value (USD) of the transaction

and the “Sales Organization” to which the order is attributed. “Sales Organization” is Burton’s internal method for segmenting sales. Sales Organization “1000” corresponds to The Burton Corporation, which is the United States sales region. Exhibit 1 therefore identifies all orders of FORUM products in the United States (Sales Organization “1000”) as well as in Europe (Sales Organization “4000”), Japan (Sales Organization “3000”), Australia (Sales Organization “2000”) and Canada (Sales Organization “6000”).

11. Attached hereto as **Exhibit 2** (BUR_00051) is a chart which summarizes, by fiscal year and Sales Organization, the voluminous data set forth in Exhibit 1. For ease of reference, the chart appearing in Exhibit 2 is reproduced below:



The data appearing in the bottom row (“Overall Result”) of Exhibit 2 correspond to the bottom row of the final page of Exhibit 1 at BUR_00050 (“Overall Result”).

12. As Exhibits 1 and 2 indicate, from October 23, 2012 through fiscal year 2017, Burton recognized net sales relating to FORUM products of \$ [REDACTED] worldwide, with \$ [REDACTED] of net sales relating to FORUM products within the United States sales region from October 23, 2012 through fiscal year 2017.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

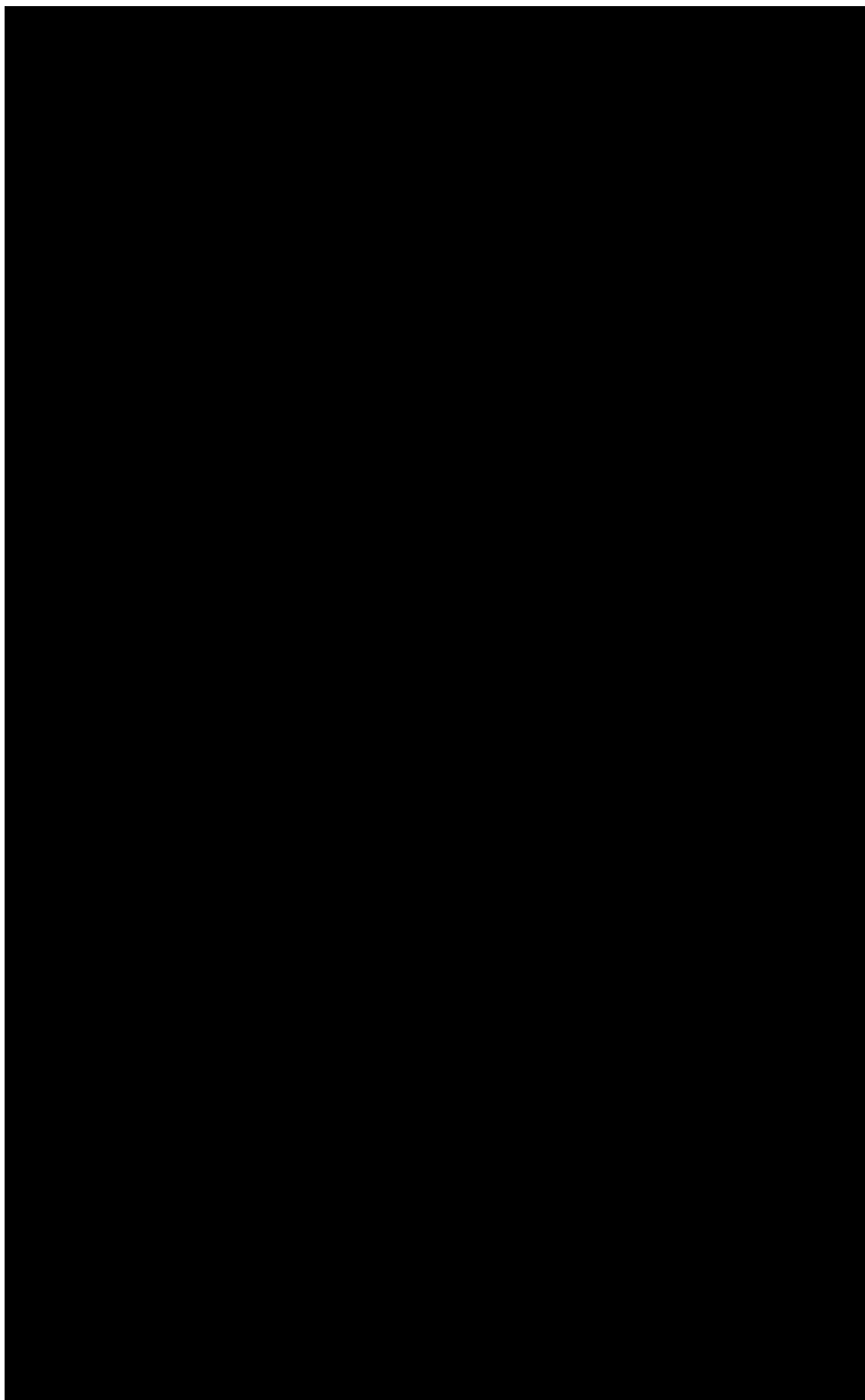
Executed this 17th day of December, 2020.

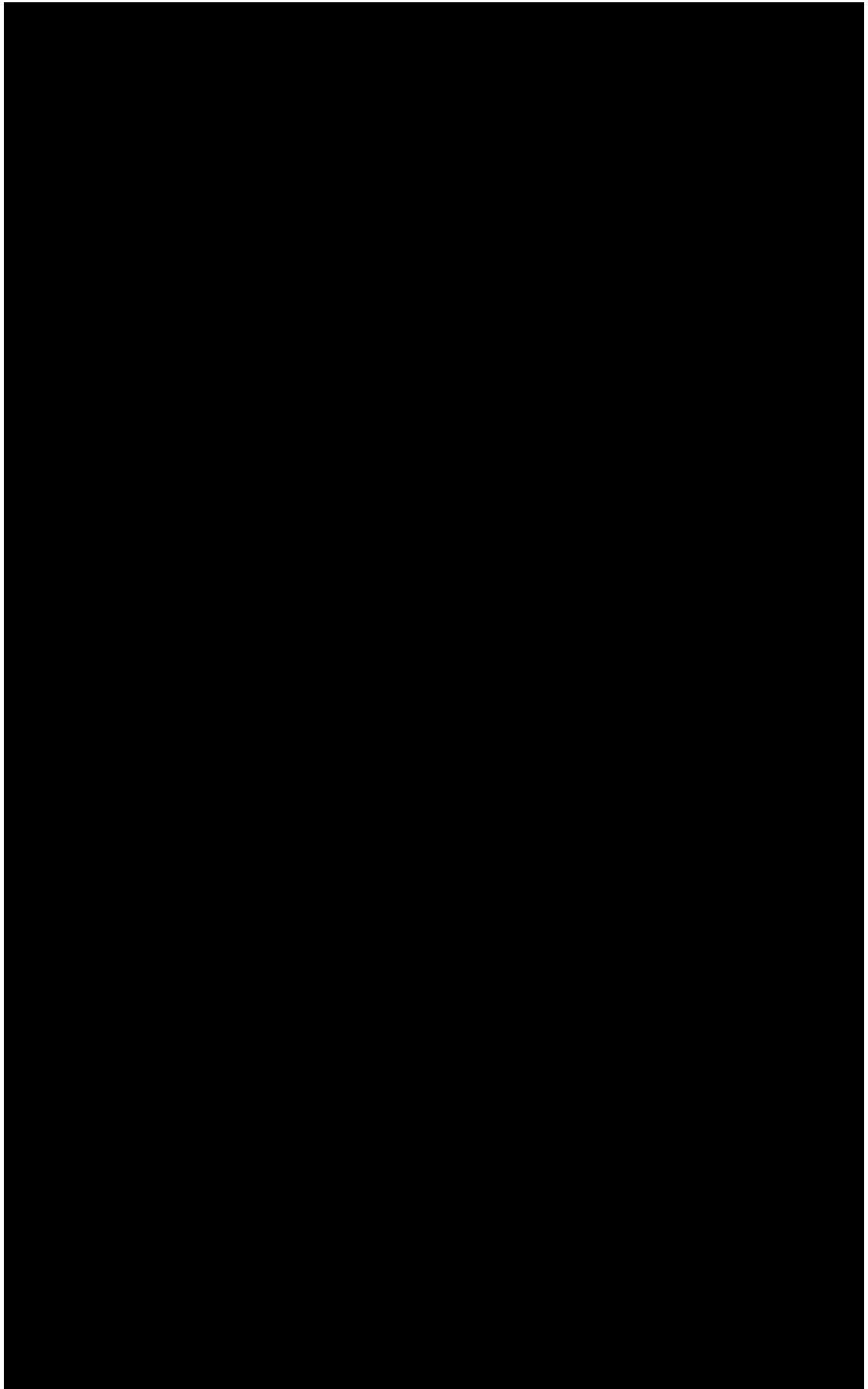
/s/ Steven Cooley

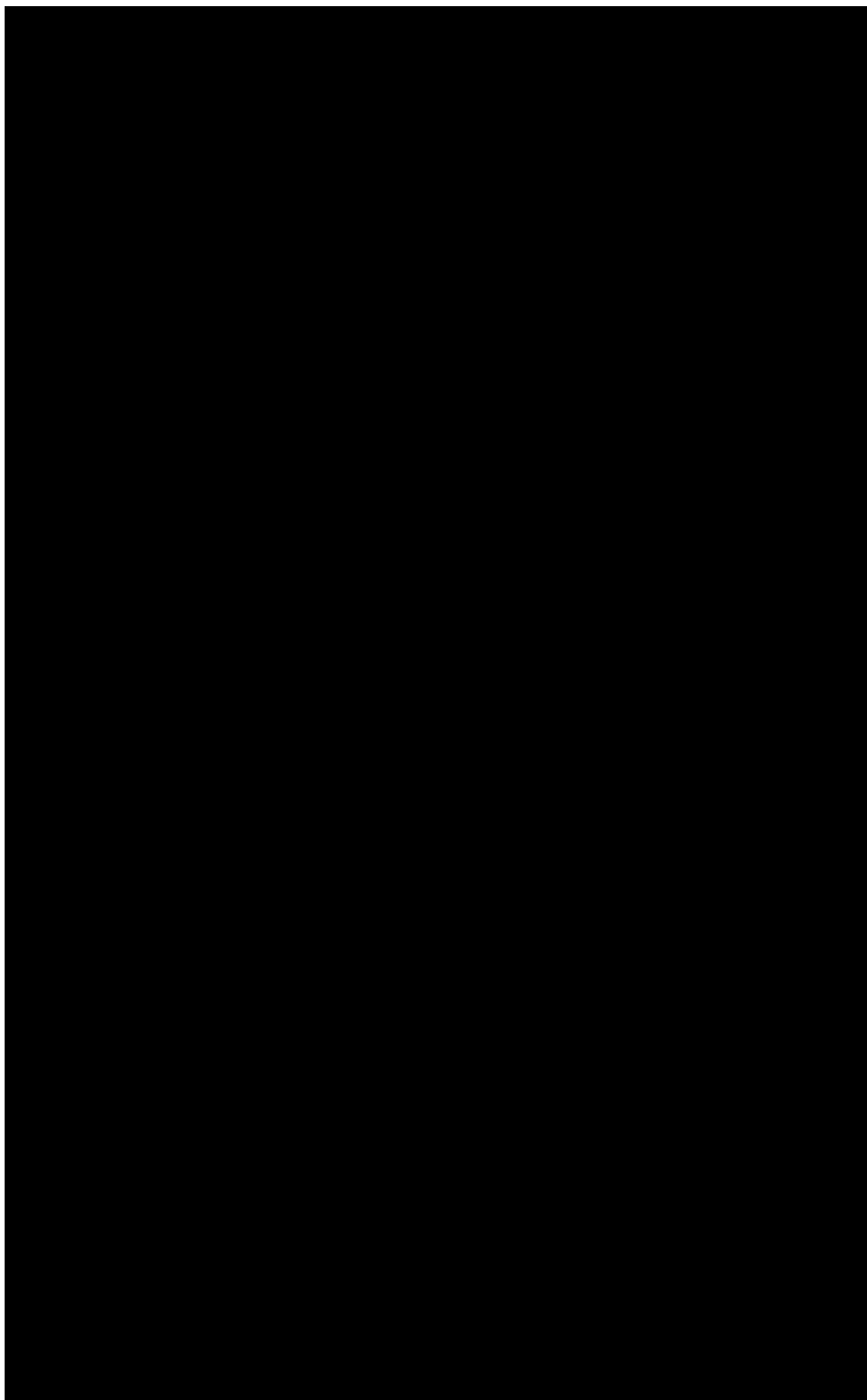
Steven Cooley

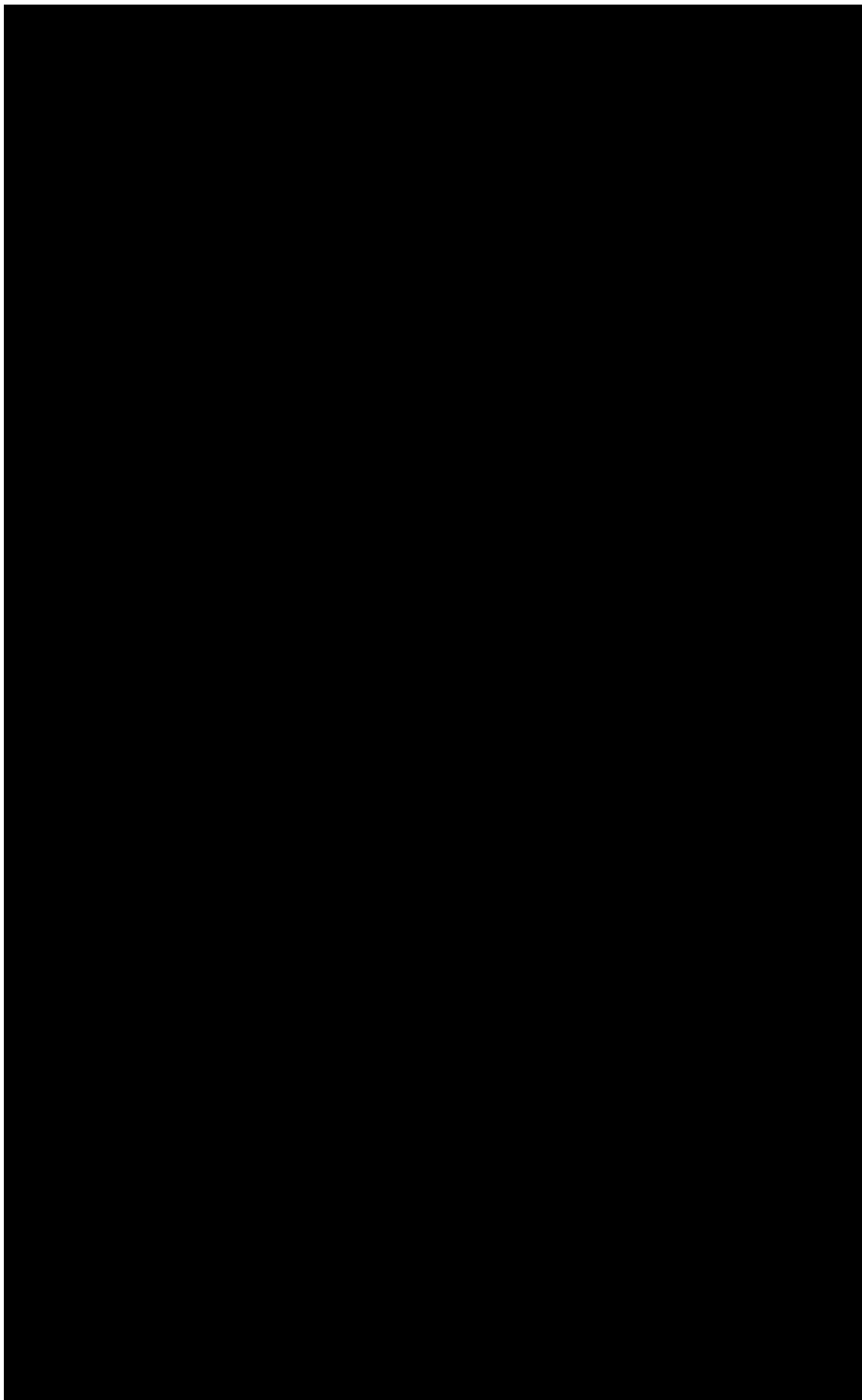
EXHIBIT 1

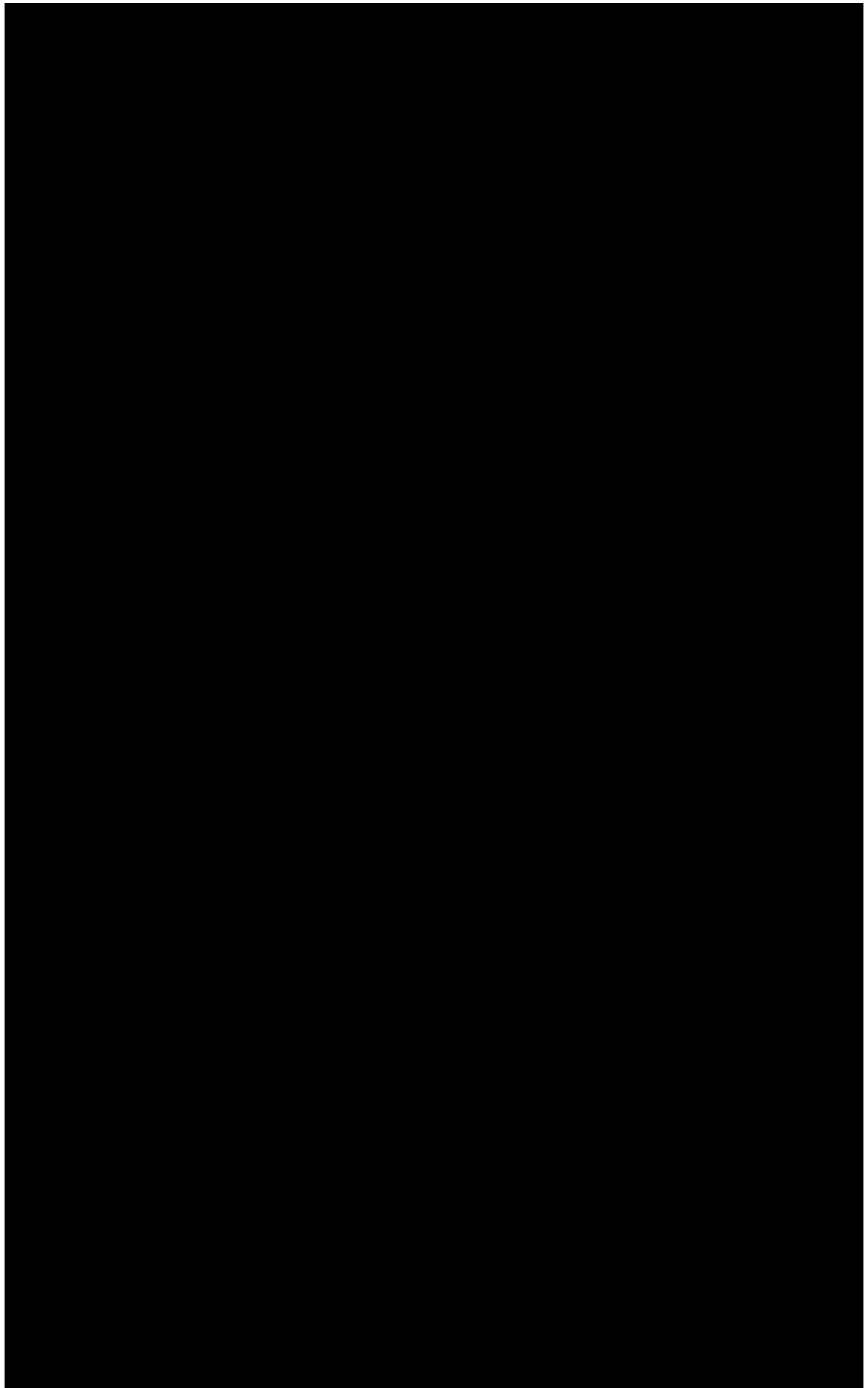
Sales organization		1000	4000	3000	2000	6000	Overall Result
Fiscal year	Sold-to party	Burton Corp	Burton Europe	Burton Japan	Burton Australia	Burton Canada	

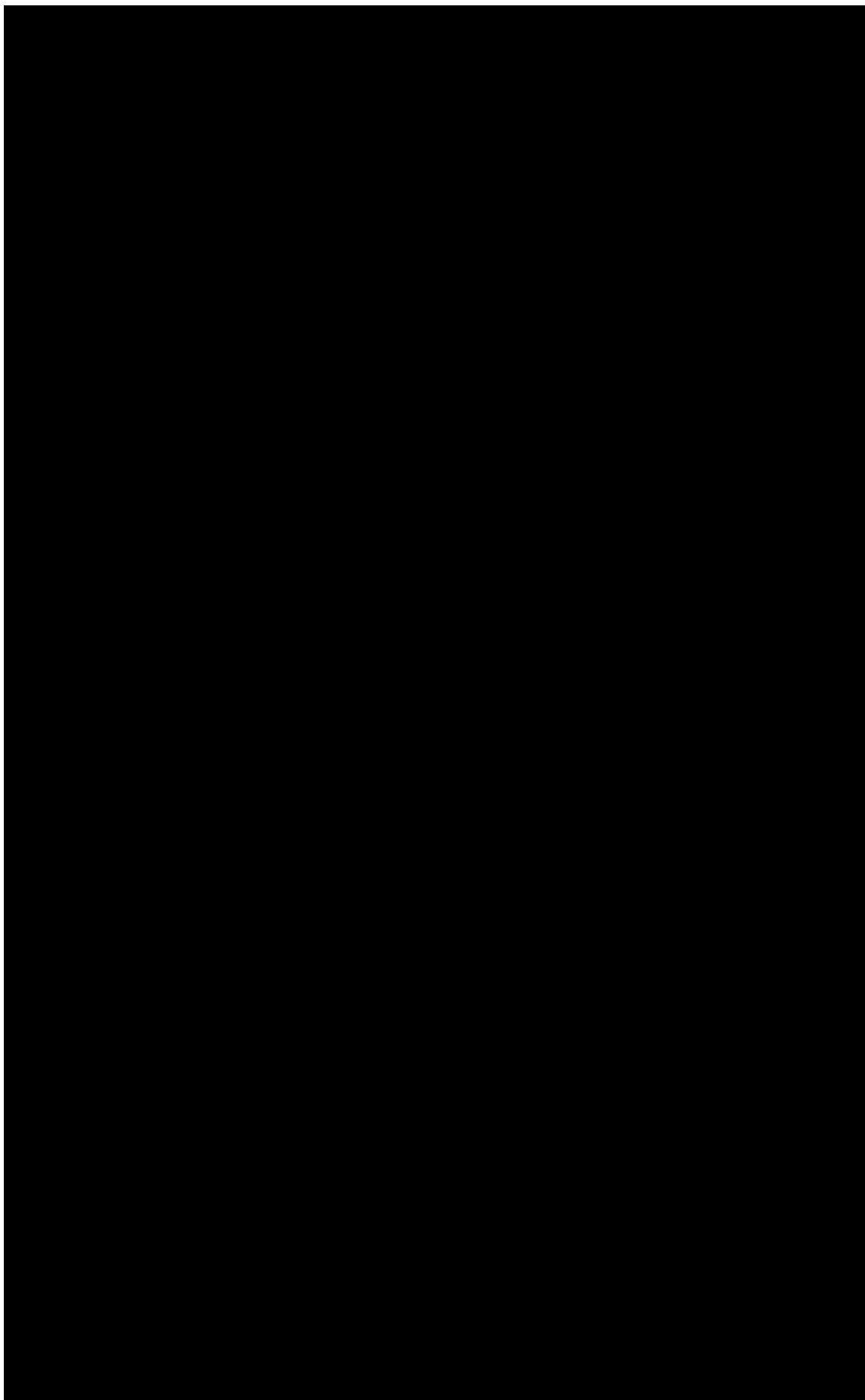


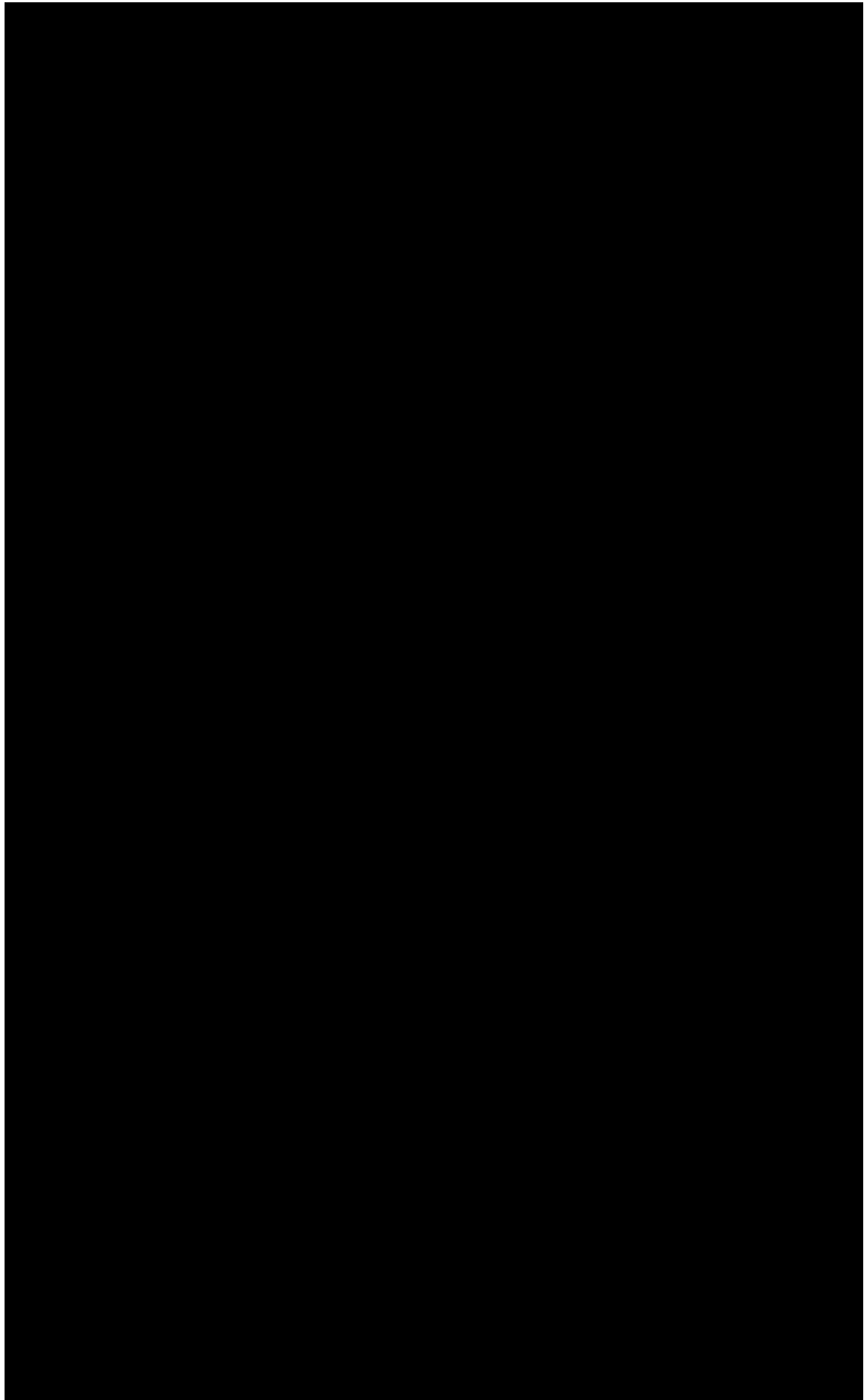


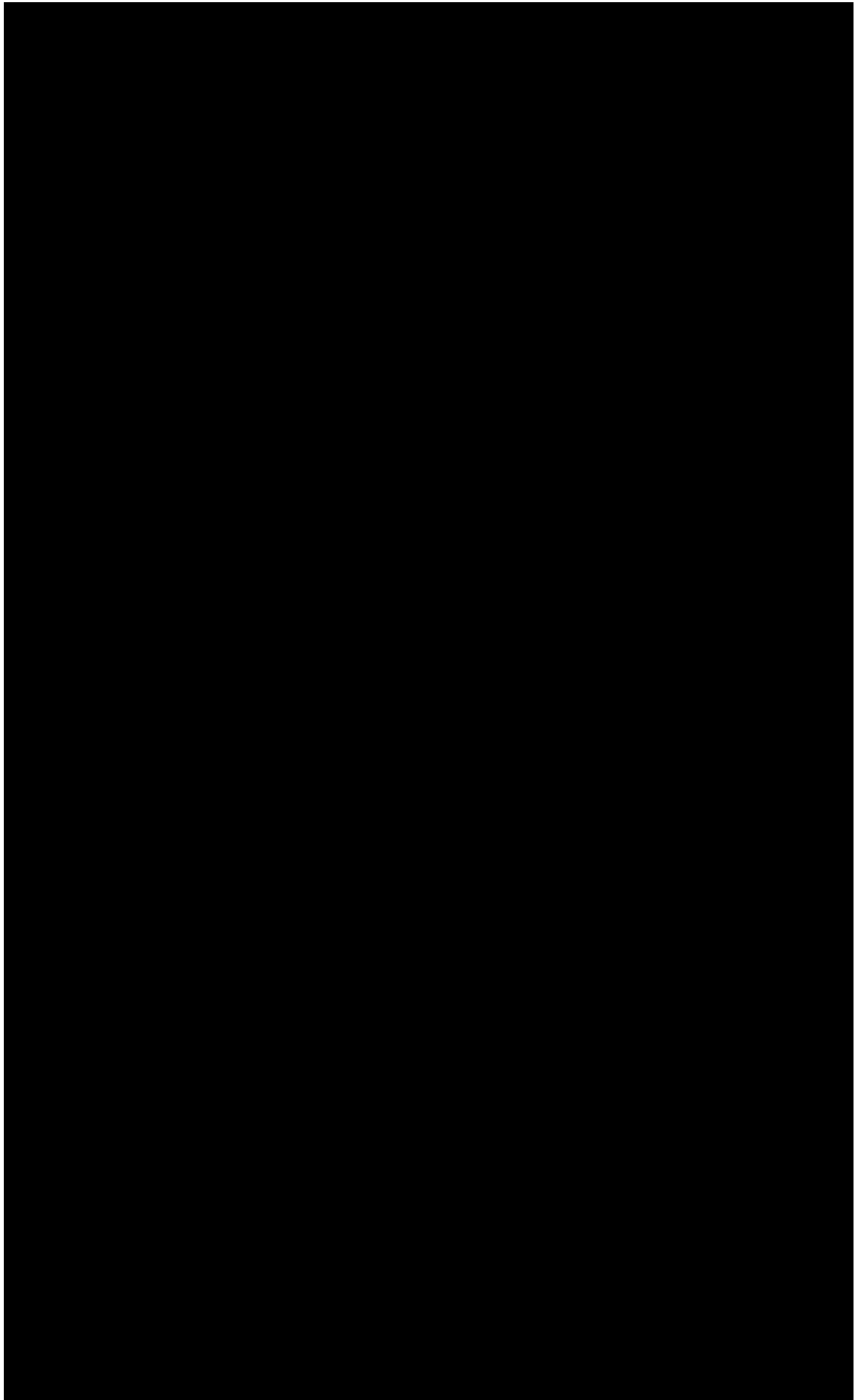


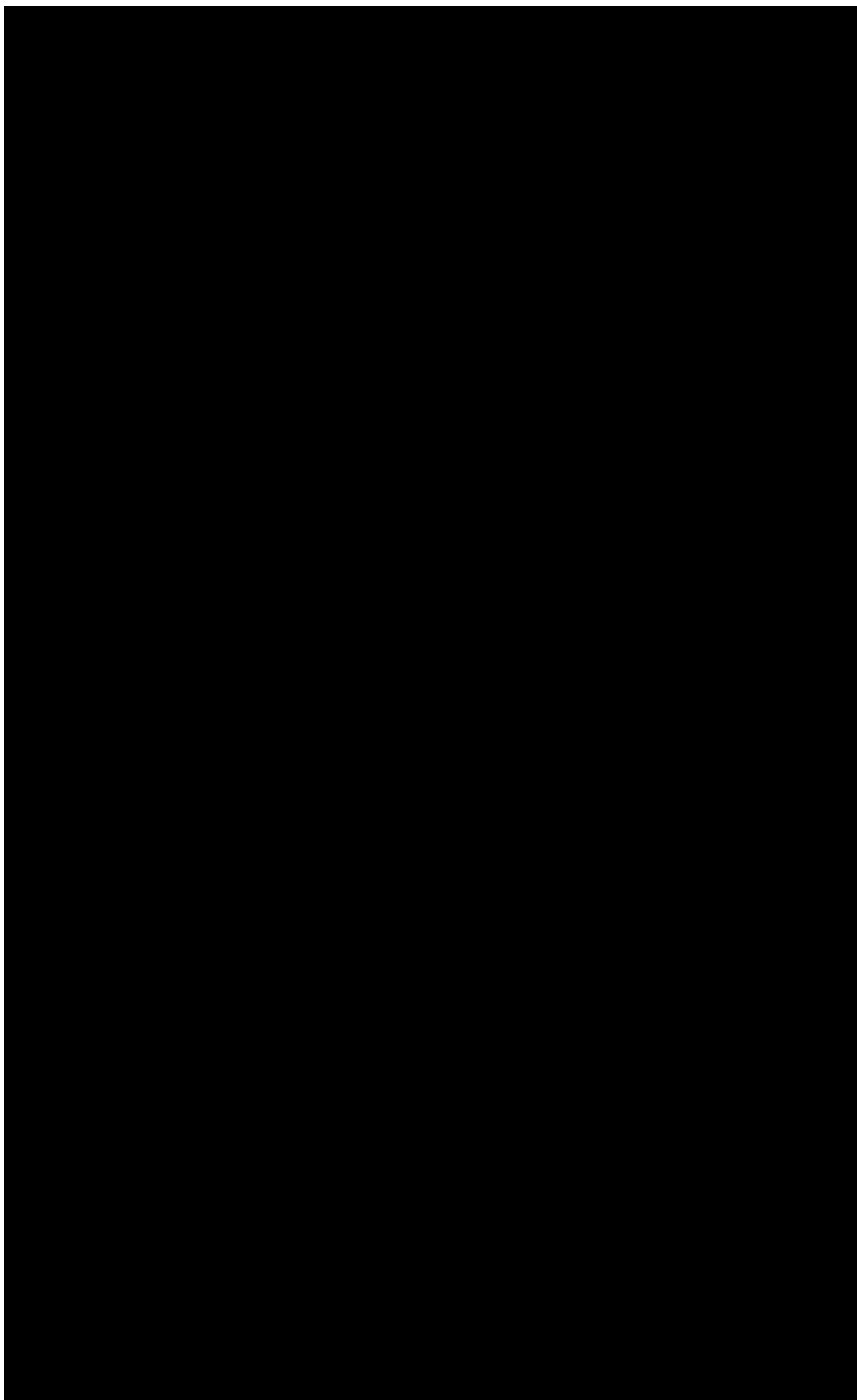












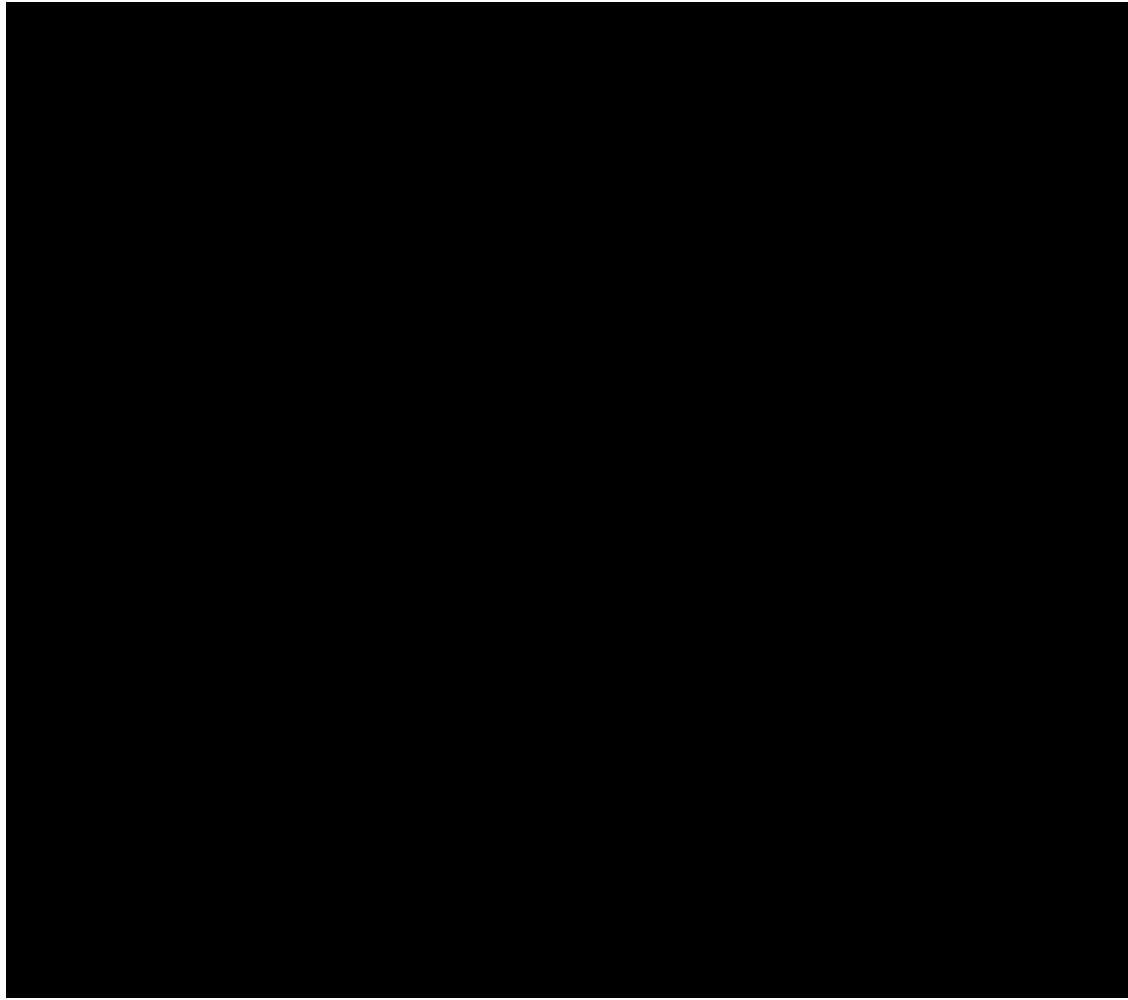
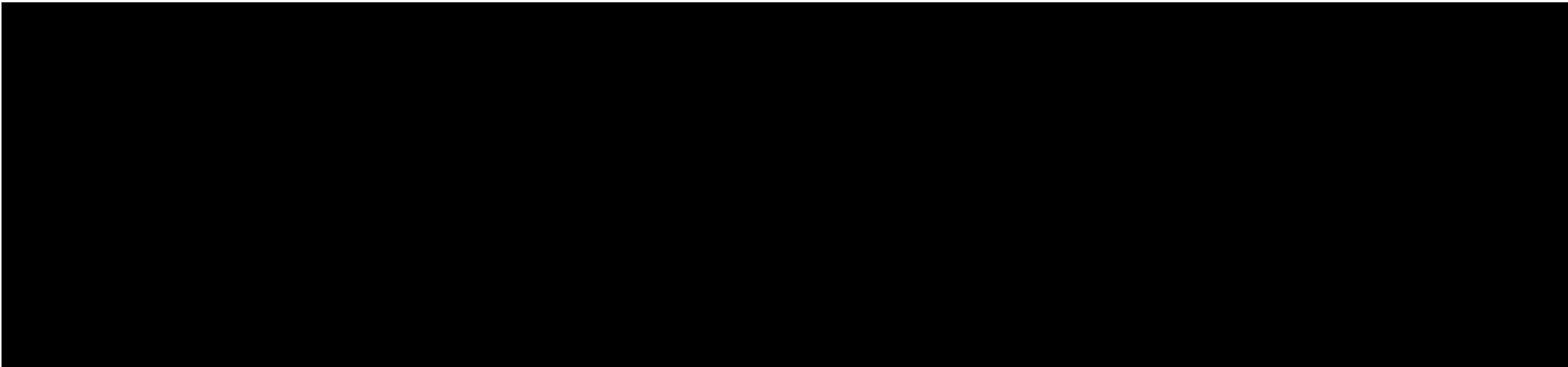


EXHIBIT 2



CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2020, a true and correct copy of the foregoing document entitled **TESTIMONY DECLARATION OF STEVEN COOLEY**, was served on Petitioner Joshua S. Schoonover, by emailing said copy to: lawgroup@coastalpatent.com.

/s/ Jennifer Parent
Jennifer Parent